Supreme Court, U.S.
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In The

Supreme Court of the United States

DJORDJE LEZAJIC,
AGENCY CASE NO. 73-096-876,

Petitioner,

vs.

JOHN ASHCROFT, ATTORNEY GENERAL,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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72 pp

QUESTIONS PRESENTED

1. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Ceballos Castillo v. INS*, 904 F.2d 519 (9th Cir. 1990).

2. Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) as well as being in conflict with *Makonnen v. INS*, 44 F.3d 1378 (8th Cir. 1995).

3. Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof and the requirements of *INS v. Stevic*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided my case was July 16, 2003.

This Court's jurisdiction is conferred by 28 U.S.C. Section 1254(1), 28 U.S.C. Section 2350 and INA Section 242, 8 U.S.C. Section 1252 and jurisdiction below at the BIA was conferred by 8 C.F.R. Section 3.1(b) re the Appeal from the Decision of the Immigration Judge Denying Appellant's application for Relief from Removal/ Deportation pursuant to INA Section 237(a)(1)(c)(i), 8 U.S.C. Section 1227,-et seq. – in United States in violation of law, remaining longer than permitted. Appellant filing for Asylum under INA Section 208(a) and Withholding of Removal under INA Section 241(b)(3), 8 U.S.C. Sections 1158 and 1251(b)(3), respectively. Further, this Court's jurisdiction is proper for the present Petition for Rehearing En Banc pursuant to F.R.A.P. Rule 35.

STATUTORY PROVISIONS INVOLVED

INA Section 208(a) and INA Section 241(b)(3).

STATEMENT OF THE CASE

Petitioner was served with a Notice to Appear (hereinafter NTA) on October 21, 1997, C.A.R. 101, issued by the INS following his affirmative application, Form I-589, for Asylum and Withholding of Removal being filed with the INS Texas Service Center on April 01, 1994. The INS referred the I-589 case to the Immigration Court and issued a Notice to Appear. The INS NTA alleged that the Petitioner was admitted to the United States at Atlanta, Georgia on or about November 2, 1992 as a visitor for pleasure, C.A.R. 102, and on March 27, 1993, Lezajic changed status to that of a student. The INS alleged that Petitioner failed to maintain status or comply with the conditions of his change of status and that Lezajic last attended school on April 23, 1994 violating INA Section 237(a)(1)(C)(i), C.A.R. 102. The Petitioner admitted the allegations, C.A.R. 104, and noted that he filed his Form I-589 Application for Asylum and Withholding of Removal on April 01, 1994. C.A.R. 105-107.

Petitioner was later represented by counsel, admitted all of the allegations in the NTA and conceded deportability as charged, seeking relief pursuant to INA Section 208(a) re Asylum and INA Section 241(b)(3) re Withholding of Removal on account of National Origin and Religion. Also an Amended I-589 Application was filed with supporting documentation. At the first Master Calendar Hearing before the Honorable Dietrich H. Sims, on January 23, 1998 the IJ continued the Master Calendar Hearing to February 27, 1998 in order to allow Lezajic to obtain legal representation. Petitioner's counsel made his Entry of Appearance on February 27, 1998, C.A.R. 111, at the Second Master Calendar hearing and the case was set for an Individual Hearing on May 4, 1998. The NTA was

marked as Exhibit No. 1 entering the record on January 23, 1998. C.A.R. 120; the I-589 Application for Asylum and Withholding of Removal, as Exhibit No. 2, and the Serbian Montenegro Profile Asylum Claims of Country Conditions was marked as Exhibit No. 3.

The Court set a new Individual Hearing Date for August 5, 1998 at 9:00 a.m. with Lezajic testifying and the INS Trial Attorney Loren Coy, cross-examining the Petitioner. The proceedings concluded the same day and a new Court Date of October 5, 1998 was set by the Court for the issuance of the Oral Decision of the Immigration Judge (hereinafter IJ) The IJ denied the request for Asylum of Petitioner pursuant to INA Section 208(a), finding Petitioner failed to meet his statutory burden pursuant to INA Section 208(a). Further, the IJ found that Lezajic failed to meet his higher burden of proof pursuant to INA Section 241(b)(3). The IJ Order was entered on October 5, 1998 and a timely Notice of Appeal was filed with the Board of Immigration Appeals (hereinafter BIA) on November 4, 1998. The BIA issued their Decision on August 20, 2002, stating their infamous one-line decision: "The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. Section 3.1(a)(7)."

Petitioner then timely filed this Petition for Review with the U.S. Court of Appeals for the Eleventh Circuit on September 17th, 2002. The U.S. Court of Appeals for the Eleventh Circuit issued a written Decision of three (3) pages on July 16, 2003 affirming the Decision of the Immigration Judge below, finding that Lezajic had inconsistencies in his testimony and his initial Form I-589, Application for Asylum and Withholding of Removal and his Amended Form I-589 and, further, that the inconsistencies went to the heart of Lezajic's claim for asylum and

the Immigration Judge's Decision was supported by substantial evidence.

STATEMENT OF THE FACTS

The Petitioner is a 34-year-old male who is a native and citizen of Yugoslavia, born on March 9, 1969 in the small town of Zemun, Yugoslavia, about five (5) miles from Belgrade, the capital city of Serbia and the former Yugoslavia. C.A.R. 272. Lezajic's parents were of mixed nationality or ethnic backgrounds, his father, Ivan Lezajic, being Serbian and his mother, Goroana Lezajic, being Croatian. C.A.R. 278. This created many problems because neither the Serbs nor Croats accepted mixed race or mixed nationality persons – they wanted a pure race.

The nationalistic pure race beliefs amongst the Serbs and Croats has deep roots historically, going back centuries to when the Turks of the Ottoman Empire conquered the Serbs in 1389. C.A.R. 227. It states at C.A.R. 227 that "Kosovo is a sacred place for Serbs and for Serbian politicians." The Ottoman Turks defeated an army of Serbian knights on a barren field here more than six centuries ago, and Serbs have commemorated their martyrdom ever since in poetry and song.

This is the hallowed ground where Slobodan Milosevic, [then] Yugoslavia's president, chose to begin his transformation from Communist Bureaucrat to nationalist leader. The fierce nationalism unleashed by Mr. Milosevic with a 1987 speech here launched his career as a popular politician and fueled the wars that followed the breakup of Yugoslavia. Milosevic had argued in 1987 that Serbs were the largest of the ethnic groups in Yugoslavia and that

they were being cheated out of their fair share of jobs and economic bounty. C.A.R. 227. The Milosevic backers used arguments based on historical myth, the war in Croatia and Bosnia, referring to Muslims as Turks. C.A.R. 217.

Petitioner testified in his sworn Affidavit attached to his Amended Form I-589, Application for Asylum and Withholding of Removal, C.A.R. 362-366 about the history of conflict between Croatia and Serbia and the breakup of the former Yugoslavia. Petitioner's father is Serbian and his mother is Croatian, C.A.R. 278, 154 and 138, and he was born in Zemun, Serbia, about five (5) miles from the Yugoslavian and Serbian capital of Belgrade. Later, we will see that VOJISLAV SESELJ, the Serb radical party leader and close ally of Milosevic, became the Mayor of Zemun, Petitioner's hometown. C.A.R. 150 and 152. Lezajic's parents later moved to Surcin, another town near Belgrade. C.A.R. 137.

The Religious and National Origin persecution, which goes back at least six hundred (600) years, has in modern times been fueled by the Croatians being granted their independence by Adolph Hitler and the German Nazis in World War II. C.A.R. 140. Lezajic testified that while Nazi allies in World War II, the Croatian nationalists ran a concentration camp where they rounded up Serbs from Croatia along with Jews and the Gypsies, telling of how some estimates had tens of thousands of people killed in the Death Camp called Jasenovac. C.A.R. 364. Also, during World War II, Muslims and Croats in Bosnia were killing Serbs and visa versa.

Once the post World War II Yugoslavian dictator, General Tito (actually a Croat, though he ruled from Belgrade) died, Slovenia and Croatia held elections and

seceded from the former Yugoslavia. C.A.R. 364. The Croats started forcing the minority of Serbs to leave Croatia, the Serbs did not want to leave and a Civil War erupted in Croatia, the worst fighting being in the Krajina region of Croatia where the Serbs used to live for centuries. C.A.R. 364. Hundreds of thousands of Serbs ended up having to flee for their lives back to Serbia. This "ethnic cleansing" of the Serbs in Croatia started before the war in Bosnia in 1992. C.A.R. 364. This played into the hands of Milosevic who capitalized on the history of conflict the Serbs had with the Croats, especially the ethnic cleansing of Serbs during World War II. The Serbs could not cope with all the new Serb refugees flooding Serbia so they retaliated against the Croats in Serbia, forcing them out of Serbia. C.A.R. 362. Once the above happened, Ethnic background and National Origin became even more important than it always had been and Milosevic poured gasoline on this fire of old fears and hatreds. C.A.R. 362 and C.A.R. 298-302.

Petitioner also noted how Croats are Roman Catholics, Serbs are Orthodox Christians and the Bosnians are primarily Muslim, but Muslims lived in Serbia and Croatia as well as along with other minorities that included Croats in Serbia and Serbs in Croatia. The U.S. State Department Country Report on Serbia-Montenegro for 1997 states at C.A.R. 283 that "Political violence, including killings by police, resulted mostly from efforts by Serbian authorities to suppress and intimidate ethnic minority groups." And at C.A.R. 282 the same Country Report notes that the "Governments human rights record continued to be poor. The police committed numerous, serious abuses including extra-judicial killings, torture, brutal beatings and arbitrary arrests," noting that police

repression continued to be directed against ethnic minorities, seriously beating scores of protestors throughout the country, sending many to hospitals. C.A.R. 282-283. Also cited was that torture and other cruel forms of punishment, which are prohibited by law, continue to be a problem and police routinely beat people severely when holding them in detention. C.A.R. 284. The history of the Croat ethnic cleansing of Serbs and the Serb response is well documented by Human Rights Watch at C.A.R. 298-303.

Against this background of events and history Lezajic summarized the issues by stating about Milosevic and Seselj that they were all former communists continuing their quest for power. C.A.R. 147, L-10-11. Lezajic testified that he realized that the Serbian government didn't want to protect ethnic minorities since the governments main objective was to make an ethnically pure country of Serbs and where no one else would have any rights. C.A.R. 150 Further, Lezajic testified how he joined public demonstrations along with thousands of other people all over Serbia protesting the Milosevic Government's election irregularities and abuses of both the Serb and non-Serb population, stating he was "beaten by the police" and "manhandled during those demonstrations" like many people who wanted democratic changes. C.A.R. 363.

Also, Lezajic testified that he feared he would be illegally drafted into the Serb military and forced to choose between having to commit "ethnic cleansing" and "genocide" in Bosnia, Kosovo or even Croatia or face death or court martial with a 10 year imprisonment, assuming that he would not be severely beaten and/or tortured for his refusal to commit ethnic cleansing. C.A.R. 398.

Lezajic had already completed his mandatory army service in the Yugoslav Army and been honorably discharged before Milosevic and company came into power and began ethnic cleansing. C.A.R. 398. But since he was in his twenties still, Lezajic testified he was still considered a Reservist. C.A.R. 398.

Sixteen (16) central European states condemned "ethnic cleansing" in the province of Kosovo, Yugoslavia's southern province. C.A.R. 266. And Serbia was cited by Sonja Biserko, head of the Helsinki Committee for Human Rights in Serbia, as having a "*collective reluctancei*" to come to terms with the "ethnic cleansing" of Bosnian Muslims and Croats, which in turn gave Milosevic the confidence to use force in Kosovo against ethnic Albanians. C.A.R. 220.

Human Rights Watch noted that the "abuses committed by Serbian forces in Croatia and Bosnia were perpetrated on such a wide scale and in such a systematic fashion, that high-level and local Bosnian Serbs authorities and military commanders could not have remained ignorant of their commission by troops under their control." C.A.R. 303. Continuing, in relevant part the Human Rights Watch report states:

> " . . . Moreover, JNA officers responsible for the siege of certain cities and attacks on civilian targets in Bosnia and Croatia have been promoted, rather than expelled from the JNA." C.A.R. 303.

And, further, the Human Rights Watch Report at C.A.R. 303 states in relevant part:

> " . . . Ratko Mladic, the man responsible for Serbian forces in the Knin and Krajina region of

Croatia, later was made commander of Bosnian Serb forces, in which capacity he has been responsible for countless attacks against civilians. *In most cases, those responsible for the most brutal abuses have been rewarded, rather than punished, by Serbian authorities.* Such action does not indicate a willingness to prevent or stop – nor to hold accountable those responsible for *human rights abuses, the* ***vast majority of which have been perpetrated along ethnic lines.***

"The military conquests of Serbian forces in Croatia and Bosnia and the *impunity* with which they conducted their brutal "ethnic cleansing" campaigns in pursuit of their territorial goals, prompted Croat and Muslim forces to follow suit and commit similar abuses in the hope of improving their success in the battlefield." (emphasis added) C.A.R. 305.

And in another document from the Financial Times (London) at C.A.R. 238 it states in the Headline:

Mothers make war on Milosevic over Kosovo conflict, The fight against ethnic Albanian "Terrorists" "has divided the people of Yugoslavia," quoting one mother protesting, and stopping all traffic, outside the Serbian Army's headquarters, shouting "Fascists, Fascists. Give us our children back," voicing the common complaints of over 100 women whose sons were all drafted into the Yugoslav army to fight ethnic Albanian "terrorists" in Serbia's province of Kosovo. Further supporting the reasonableness of the Petitioner's fears about being called as a Reservist by the Yugoslav-Serbian Army and forced to commit "ethnic cleansing" or face the terrible consequences, see C.A.R. 235, where an Inter Press

Service article is Headlined: "POLITICS – YUGOSLAVIA/KOSOVO: ARMY CHALLENGED BY DRAFTEE'S PARENTS."

The article states in relevant part the following:

> " . . . For the last few days a small knot of mothers and fathers have gathered outside the headquarters of the Yugoslav Army General Staff in central Belgrade."

On the face of things their request is simple – they want their draftee sons moved out of barracks in the breakaway Serbian province of Kosovo and back to camps away from the fighting.

The government says "criminal terrorism" in Kosovo is being dealt with by special police units. *The Yugoslav Army (VJ), they say, is not involved.* But to the distraught parents with sons in the line, *the casualty lists are all the evidence of involvement they need.* (emphasis added).

" . . . *They keep telling us our sons are not exposed to any danger," says Stojan Mitric*, a 50-year old plumber from the northern Serbian town of Novi Sad. "*But I do not believe them.* ***They are lying to us now, as they did during wars in Bosnia and Croatia.***"

"The parents say that their draftee sons, aged 19 to 22, were originally kept out of the province. But in a wave of midnight redevelopments that reportedly reached a peak on the night of June 8, draftees were hauled out of bed, told they were going 'to Belgrade,' loaded into trucks – and woke up in Kosovo". (emphasis added)

. . . Neither the Supreme Defense Council nor its chairman have addressed the parents' demands. Instead, the head of the VJ Information Service, General Gradimir

Zivanovic, told the parents that "noone, not even the chief of the army, is able to order the return of soldiers. It is a matter for the Supreme Defense Council." C.A.R. 235 (emphasis added).

Petitioner is from Zemun, just outside of Belgrade, the capital city of Serbia/Yugoslavia. He has testified that he cannot return to his home country because of the persecution on account of National Origin and Religion. In Zemun, according to Mr. Seselj's orders, who stated in his speeches as Milosevic's right hand man and then Mayor of Zemun, amongst his other infamous accomplishments, *that ethnic minorities in Serbia should not live there – only Serbs should*. C.A.R. 365. This is supported by the U.S. Department of State Country Reports on Serbia-Montenegro for 1997 at C.A.R. 287 where it states in relevant part:

> " . . . Ultranationalist local officials *in Zemun encouraged the illegal eviction of ethnic Croats from their apartments, after which they were replaced by ethnic Serb refugees*. (See Section 5)." (emphasis added)

Section 5 of the U.S. State Dept. Report above mentions that in Zemun, the Belgrade Helsinki Committee office identified *at least* three instances where the city government, under *ultranationalist mayor Vojislav Seselj*, encouraged the illegal eviction of ethnic Croats from their apartments, after which they were replaced by ethnic Serb refugees. C.A.R. 292.

REASONS FOR GRANTING THE PETITION

ISSUE NO. 1

Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 208 (a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), said Decision being in conflict with *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and an unacceptable departure from *Ceballos Castillo v. INS*, 904 F.2d 519 (9th Cir. 1990).

The 11th Circuit Court reviewed the IJ Decision pursuant to *Al Najjar v. Ashcroft*, 257 F.3d 1262, 1283 (11th Cir. 2001), since the BIA affirmed the IJ's Decision without opinion thus making the final agency Decision subject to review. The 11th Circuit noted at page three (3) of their Decision that the evidence, as pointed out by the IJ, lacks consistency and specific details. Further, the 11th Circuit stated that the inconsistencies between Lezajic's [original and amended] applications for Asylum and his testimony were both significant and went to the heart of Petitioner's claim for asylum, finding that the IJ's decision was supported by Substantial Evidence.

The 11th Circuit and the IJ both relied on the key case of *Ceballos Castillo v. INS*, 904 F.2d 519, 520 (9th Cir. 1990), where the IJ stated, relying on *Ceballos*, C.A.R. 086, that the Court there found the alien lacked credibility because he had made *INCONSISTENT STATEMENTS*. (emphasis added).

Lezajic has not made inconsistent statements in his Amended Form I – 589 or in his Trial Testimony, except the single checked box answered "No" re Question 21, "Have you or any member of your family ever been mistreated/threatened by the authorities of your home country or by a group(s) controlled by the government, or by a group(s) which the government of your home country is unable or unwilling to control." No attempt to deny the changed answer on the *Amended* I-589 (with leave of Court) was stated by Lezajic – to the contrary, he was very open and honest about it as set forth above.

The Amended Form I-589 application, C.A.R. 276, at page 5, Question 4, is changed, but, as asserted above, builds upon the *prior* statement of Petitioner in his Initial Form I-589 application, C.A.R. 398, wherein Lezajic states how the Serbian government promotes "RELIGIOUS HATRED AND ETHNIC CLEANSING AMONGST *THEIR OWN PEOPLE*." (emphasis added).

The IJ, the BIA and now Respondent's Counsel have COMPLETELY OVERLOOKED the above WRITTEN TESTIMONY by Lezajic in his Initial I-589 application. If this were the only serious OMISSION from the Decision by the BIA upholding the IJ below; the Respondent's Answer Brief and the 11th Circuit, then Petitioner would not be in a position to win the day in this Appeal. But even more serious are the ADMISSIONS and CONTRADICTIONS by both the IJ and Respondents' Counsel concerning the Objective Documentary Evidence in the Record that goes to the HEART (not the fringes of the case like Respondent's and the IJ's arguments do) of Lezajic's Well-Founded Fear of Future Persecution On Account of Nationality and Religion, based on a Pattern and Practice of Persecution on Account of National Origin Against

Similarly Situated mixed-race or mixed Ethnic groups – re Croats – Serbs, in any of the former Yugoslavia countries, but especially Petitioner's home country of Serbia and the neighboring countries of Croatia, Bosnia and Kosovo.

The key Admission in Respondent's Brief is set forth at R.A.B., page 12, under Statement of the Case, Sub-Part E., Country Reports and Documentary Evidence, wherein it states:

> "Both Lezajic and the INS submitted *extensive documentary evidence* discussing the *violent fracturing* of Yugoslavia into several different states, *the military actions Serbia fought in and against Croatia,* Bosnia and Kosovo, and the *resultant ethnic cleansing that occurred.* The ***documentary evidence was consistent with Lezajic's testimony concerning the history of, and general conditions in Yugoslavia,*** but it did not deal with, or discuss, Lezajic personally or directly." (emphasis added).

The IJ's insistence on the old Singled Out Standard is both inappropriate considering Petitioner's claims and the evidence as well as the law, which brings us to Issue No. 2.

ISSUE NO. 2

> Whether the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's Claim for Relief pursuant to INA Section 208(a) re Asylum was against the Substantial Weight of the Evidence and contrary to law in that Petitioner in fact met his statutory and discretionary burdens of proof pursuant to the above and the requirements of 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) as well as

being in conflict with *Makonnen v. INS*, 44 F.3d 1378 (8th Cir. 1995).

We submit that the Decision of the BIA upholding the Decision and findings of the IJ are against the Substantial Weight of the Evidence and that Lezajic did in fact meet his burden of proof pursuant to INA Section 208(a). Further, that the IJ showed evidence of bias and prejudice in that the U.S. State Dept. Country Reports and other Objective Supporting documentation in the record re the history of similar persecution in Yugoslavia, Serbia, Croatia and surrounding areas was totally ignored in the record by the IJ contrary to the dictates of *Matter of Mogharrabi*, 19 I.&N. Dec. 439 (BIA 1987) where the BIA stated that where the country at issue has a long and terrible history of the kind of persecution alleged, the Court must give significant attention to such circumstances. The IJ herein called "omissions" inconsistencies, and strained for a gnat while he was swallowing a camel. The IJ also violated the dictates of *Matter of S-M-J*, 21 I.&N. Dec. 724-25 (BIA 1997) that requires that general corroborating evidence and evidence of country conditions shall be produced, stating that evidence of background conditions are not merely optional because the application cannot be properly evaluated without it. Then how can a fair and impartial decision by the IJ be upheld if the IJ completely ignored the evidence in the record of the long and terrible history of ethnic cleansing/national origin persecution in Yugoslavia, Serbia, Croatia and neighboring states?

The IJ incorrectly applies the "singled out theory," instead of the Pattern and Practice Well Founded Fear of Future Persecution claim of Petitioner by stating in his Decision at C.A.R. 082 "Respondent also stated that the

police did not specifically target him but rather all demonstrators."

Further, at C.A.R. 092, contrary to the dictates of *Mogharrabi* above, the IJ in his Decision denigrates the importance of the long and terrible history of ethnic conflict in Yugoslavia and Lezajic's Objective Documentary Evidence of same stating in relevant part:

> "The respondent submitted newspaper articles and other documents in support of his asylum claim. The evidence is of a general nature and *does not deal with or discuss* the *respondent individually*, such evidence generally in nature which does not deal with the respondent personally or directly is *not entitled to great weight*." (emphasis added).

The IJ's Decision and findings above are contrary to law, against the Substantial Weight of the evidence in the record as well as an abuse of discretion and this Court should reverse the Decision of the BIA upholding the Decision of the IJ and Grant Petitioner Asylum.

See also *Matter of V-T-S,* Int. Dec. 3308 at 7-8 (BIA 1997) where it was held that evidence to prove persecution may be presented "through affidavits, journalistic accounts [and no] particular amount or kind of evidence to demonstrate that his fear is well-founded in necessity. And pursuant to 8 C.F.R. Section 208.13(b)(2)(i) (1995), the burden of proof in Asylum cases does not require the applicant to be "singled out individually for persecution" if there is a "pattern and practice" of persecution of people "similarly situated" to the applicant.

The IJ below noted that Lezajic's documentary evidence was of a general nature and does not deal with or

discuss the respondent individually, such evidence generally in nature which does not deal with the respondent personally or directly is not entitled to great weight. C.A.R. 092. The IJ also found that the objective documentary evidence does not overcome the Court's finding that the respondent is not a credible witness and he has not presented a credible asylum claim.

Well, the Respondent's Counsel, as noted above, has admitted otherwise. Further, the IJ's legal analysis is contrary to law and his findings are clearly against the Substantial Weight of the evidence. See analysis of the IJ's faulty legal reasoning set forth in detail in Petitioner's Opening Brief at pages 24-30.

At page three (3) of his Decision, C.A.R. 074, the IJ correctly sets forth the basic legal tests pursuant to *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), to-wit:

> " . . . Accordingly, in determining whether a respondent is eligible for asylum, *respondent's subjective mental state* must be considered against the background of circumstances prevailing in the respondent's own country. The *objective reasonableness of respondent's fear can be based upon what has happened to other SIMILARLY SITUATED* as reported in the Department of State Country Reports on Human Rights Practices *or based on other reliable sources*." (emphasis added)

The above reference to Similarly Situated (which is part of the Pattern and Practice relief re establishing a Well-Founded Fear of Future Persecution on account of National Origin (or one of the other four (4) protected grounds) is codified in the INA regulations 8 C.F.R. Section 208.13(b)(2).

But the *only* analysis the IJ applies to Petitioner's case is the old Singled Out theory as set forth above. The same applies to the biased and faulty legal conclusions in Respondent's Brief. Respondent's counsel at R.A.B., pages 31 and 32 blatantly states, without foundation, that Lezajic "testified falsely" (R.A.B., page 31) and again at page 32, states "testified falsely in an effort to enhance his asylum application." Nowhere is any contradiction in Petitioner's testimony cited except the checked box – OMISSIONS are *NOT* contradictions. The final straw in this incredulous attack on my client is stated at R.A.B., pages 35 and 36:

> "Lezajic goes to great detail in his brief describing the voluminous documentary evidence adduced at his asylum hearing which describes the history and *deplorable country conditions that prevail in Serbia and the other former constituent states that made up Yugoslavia.* See Petitioner's Brief at 4-21. *He asserts that the immigration judge erred by failing to consider it as corroborating his claim of persecution.* Petitioner's Brief at 26-30.
>
> Lezajic's assertion, however, rests on a faulty premise. The immigration judge did not discount the documentary evidence or fail to consider it. ***Rather, he held,*** *that it was not entitled to a great deal of weight* ***because it did not relate directly or personally to Lezajic.*** A.R. 92 *This finding is supported by substantial evidence in the record."* (emphasis added).

Respondent's Brief partially makes my point by referencing it and then crystallizes the key issue before this Court that was raised in Petitioner's Opening Brief and herein – that the *only* analysis *APPLIED* by the IJ

and Respondent's Counsel is the old Singled Out Theory. This is because if the Pattern and Practice Analysis re Similarly Situated persons is engaged in only one reasonable conclusion can result – that Lezajic does have a legitimate Well-Founded Fear of Persecution on Account of National Origin, Religion and Political Opinion.

Respondent's Brief even *ADMITS* that the above legal analysis in Petitioner's Brief is correct – see R.A.B. at page 36:

> " . . . ***Although Lezajic correctly points out*** *that "the burden of proof in asylum cases does* ***not*** *require the applicant to be singled out individually for persecution* ***if there is a pattern and practice of persecution of people similarly situated*** *to the applicant*, Petitioner's Brief at 29 (internal quotation marks omitted), he fails to recognize that his documentary evidence does not compel a conclusion that there is a pattern and practice of persecution against individuals who are similarly situated to himself. ***The individual most similarly situated to Lezajic is obviously his brother who has the same mixed ethnic heritage*** and the same prior military service record. A.R. 168-69." (emphasis added).

Note that Respondent's counsel does *NOT* cite any legal support for their MYOPIC and UNPRECEDENTED application of the Pattern and Practice Similarly Situated analysis. This is clearly contrary to law, contrary to 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) and *Makonnen v. INS*, 44 F.3d 1378, 1382-84 (8th Cir. 1995), where the Court there reversed the BIA where it ignored the (above) regulation and sought to require *all* members of the group to show persecution.

Further, the above legal analysis and application by Respondent of Pattern and Practice is contrary to the fundamental tenets of *INS. v. Cardoza-Fonseca*, 480 U.S. 421 (1987) where the U.S. Supreme Court held that a one (1) in ten (10) chance of the feared event occurring was sufficient for a finding of a "reasonable fear" and a Grant of Asylum. See Petitioner's Asylum Law: Burden of Proof on Applicant, C.A.R. 367, at 371-373. Further, at C.A.R. 373-374, it cites *Matter of Mogharrabi*, 19 I.&N. 439 (BIA 1987) wherein the BIA noted in particular that where the "country involved has a history of persecuting persons in circumstances similar to the applicants" the Court must give significant attention and weight to such evidence." Clearly there has been a conflict with the above law, including U.S. Supreme Court precedent, by the 11th Circuit, as well as an outrageous, reckless and unacceptable departure from accepted legal analysis and precedent, not to mention fundamental fairness when reviewing the record for Substantial Evidence.

ISSUE NO. 3

> Whether, in the alternative, the Decision of the U.S. Court of Appeals for the Eleventh Circuit in Denying Petitioner's claim for Relief pursuant to INA Section 241(b)(3), re Withholding of Removal, was against the Substantial Weight of the Evidence and contrary to law in that Petitioner met his statutory burden of proof and the requirements of *INS v. Stevic*, 467 U.S. 470 (1984), as well as for the reasons stated in answer to Issues No. 1 and No. 2 above, incorporated by reference.

The above Answers to Issues No. 1 and No. 2 above are incorporated by reference herein and meet the "more

likely than not" standard pursuant to Withholding of Removal and INA Section 241(b)(3) and *STEVIC*, supra.

CONCLUSION

The petition for a writ of certiorari should be granted. Clearly the 11th Circuit Decision herein is in serious conflict with the U.S. Court of Appeals for the Eighth Circuit re *Makonnen v. INS*, 44 F.3d 1378 (8th Cir. 1995) in the application of the Pattern and Practice Similarly Situated bases for a proper claim under INA Section 208(a), the Eleventh Circuit departing from accepted precedent and INS regulations at 8 C.F.R. Sections 208.13(b)(2)(i) and 208.16(b)(3) re a proper and fair evaluation of the record under the Substantial Evidence standard of review. Further, the 11th Circuit Decision is in serious conflict with the U.S. Supreme Court precedent of *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987) and *Ceballos Castillo v. INS*, 904 F.2d 519 (9th Cir. 1990) re what constitutes a reasonable fear and what amounts to credible testimony as a basis for proving that fear, consistent with the Substantial Evidence in the record.

Respectfully submitted,

DJORDJE LEZAJIC, Pro Se
1944 Fillmore Street
Hollywood, FL 33020
954-920-3287

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15067
Non-Argument Calendar

BIA No. A73-096-876

DJORDJE LEZAJIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

Appeal from a Final Decision of
the Board of Immigration Appeals

(Filed July 16, 2003)

Before TJOFLAT, BIRCH and COX, Circuit Judges.

PER CURIAM:

Djordje Lezajic, through counsel, petitions this court for review of the Board of Immigration Appeals ("BIA's") order affirming without opinion the decision of the immigration judge ("IJ") denying this application for asylum and withholding of removal. Because Lezajic's immigration proceedings commenced on October 21, 1997, the

permanent rules of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996) ("IIRIRA"), govern his petition for review.

Lezajic argues that the IJ erred in finding that his testimony was not credible. Lezajic also argues that the IJ abused his discretion in not giving sufficient weight to the history of persecution and discrimination in Yugoslavia.

As an initial matter, the BIA affirmed the IJ's decision without opinion, thus, the IJ's decision became the final agency decision subject to review. *See* 8 C.F.R. § 3.1(a)(7). Accordingly, we review the IJ's decision. *Al Najjar v. Ashcrfot*, 257 F.3d 1262, 1283 (11th Cir. 2001).

The IJ's factual determinations are reviewed under the substantial-evidence test, and this court "must affirm the [IJ's] decision if it is 'supported by reasonable, substantial, and probative evidence on the record considered as a whole.'" *Id.* at 1283-84 (citation omitted). It is the factfinder's duty to determine credibility, and we may not substitute our judgment for that of the IJ with respect to credibility findings. *Vasquez-Mondragon v. INS*, 560 F.2d 1225, 1226 (5th Cir. 1977)[1]; *Perinpanathan v. INS*, 310 F.3d 594, 597 (8th Cir. 2002) (same). Under this highly deferential standard of review, the IJ's decision must be deferred to as supported by substantial evidence unless the evidence compels a reasonable factfinder to find

[1] The Eleventh Circuit is bound by Fifth Circuit precedent decided before October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

otherwise. *INS v. Elias-Zacarias*, 502 U.S. 478 n.1, 112 S. Ct. 812, 815 n.1 (1992).

The evidence, as pointed out by the IJ, lacks consistency on specific details. Although a few inconsistencies could perhaps have been excused, the inconsistencies between Lezajic's applications for asylum and his testimony were both common and significant. Based upon the number of inconsistencies which went to the heart of Lezajic's claim for asylum, the IJ's decision is supported by substantial evidence in the record.

Substantial evidence in the administrative record supports the IJ's finding that Lezajic's testimony was not credible, given the inconsistencies between his applications for asylum and his testimony at his immigration proceedings.

PETITION DENIED.

APPENDIX B

United States Court of Appeals

For the Eleventh Circuit

No. 02-15067

BIA No. A73-096-876

DJORDJE LEZAJIC,

Petitioner,

versus

U.S. ATTORNEY GENERAL,
IMMIGRATION AND NATURALIZATION SERVICE,

Respondents.

Petition for Review of a Final Order of the
Board of Immigration Appeals

JUDGMENT

(Filed Jul. 16, 2003)

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: July 16, 2003
For the Court: Thomas K. Kahn, Clerk
By: Meoli, Anthony

ISSUED AS MANDATE

SEP 08 2003

U.S. COURT OF APPEALS
ATLANTA, GA.

APPENDIX C

NEW CASE FILING

Court of Appeals for the Eleventh Circuit

Djordje Lezajic

Petitioner

v.

John Ashcroft, Attorney General,

Respondent.

Petition for Review

On Appeal from the Board of Immigration Appeals

Judd B. James, Esq.
Hollywood Immigration Clinic, Inc.
4437 Hollywood Blvd., Suite C
Hollywood, FL 33021
Tel: 954-894-6700
Fax: 954-893-0927

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Djordje Lezajic, Petitioner	)	
v.	)	**Petition for Review**
John Ashcroft, Attorney General, Respondent	)	Agency Case No. A73-096-876

Petition for Review

The Petitioner, Djordje Lezajic, hereby petitions this Court for review of the attached final order of the Board of Immigration Appeals entered against him on August 20, 2002. The validity of this order has not been upheld by any court.

Respectfully submitted,

Judd B. James, Esq.
Hollywood Immigration Clinic, Inc.
4437 Hollywood Blvd., Suite C
Hollywood, FL 33021
Telephone: (954) 894-6700
Facsimile: (954) 893-0927

By: /s/ Judd B. James
Judd B. James, ESQ.
Illinois Bar No. 06181629
Admitted to 11th Circuit
Ct. of Appeals 04-02-2002

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 02-15067-B

DJORDJE LEZAJIC, Petitioner vs. IMMIGRATION AND NATURALIZATION SERVICE, Respondent.	)	Petition for Review of an Immigration Matter

CERTIFIED ADMINISTRATIVE RECORD

A73 096 876

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APPENDIX E

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A73-096-876 – Miami Date: AUG 20 2002

In re: LEZAJIC, DJORDJE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Judd James, Esquire

ON BEHALF OF SERVICE: Stuart A. Siegel, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(a)(7).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 240.26(c), (f). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ Roger A. Paule
FOR THE BOARD

APPENDIX F

UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW BOARD OF IMMIGRATION APPEALS FALLS CHURCH, VIRGINIA

IN THE MATTER OF

Djordje LEZAJIC
A#73-096-876

IN REMOVAL PROCEEDINGS

Respondent /

SERVICE MEMORANDUM ADOPTING THE IMMIGRATION JUDGE'S DECISION AS ITS BRIEF

The Immigration & Naturalization Service (hereinafter "the Service"), by and through undersigned counsel, responds to the Respondent's appeal from the immigration judge's decision below, and states:

1. Respondent appeals the immigration judge's decision below denying the application for asylum and withholding of deportation. However, the Respondent does not appeal the immigration judge's decision below granting him voluntary departure.

2. The immigration judge's decision correctly sets forth the facts and applicable law. Therefore, in lieu of filing a brief in support of the immigration judge's decision, the Service hereby adopts the reasoning of the immigration judge and requests that the order be affirmed.

WHEREFORE, the Service respectfully requests that the Respondent's appeal be DISMISSED and that the immigration judge's decision denying asylum and withholding of deportation be AFFIRMED.

Respectfully submitted,

IMMIGRATION &
NATURALIZATION SERVICE

/s/ Stuart A. Siegel
Stuart A. Siegel, Assistant
District Counsel
155 South Miami Avenue,
5th Floor
Miami, FL 33130
(305) 400-6160, ext. 6586

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail on this 10th of June, 1999 to:

James Judd, Esq.
4437 Hollywood Blvd.
Suite C
Hollywood, FL 33021

/s/ Stuart A. Siegel
Stuart A. Siegel
Assistant District Counsel

c:adoptapp.exc

APPENDIX G

IMMIGRATION COURT
155 SOUTH MIAMI AVE., ROOM 800
MIAMI, FL 33130

In the Matter of	Case A73-096-876
LEZAJIC, DJORDJE Respondent	IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Oct 5, 1998. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to alternative to

[x] Respondent's application for voluntary departure was granted until November 4, 1998 upon posting a bond in the amount of $500.00. with an alternate order of removal to Yugoslavia.

[x] Respondent's application for asylum was ( ) granted (X) denied ( ) withdrawn.

[x] Respondent's application for withholding of removal was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If

granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section ___ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.

[ ] Respondent's application for adjustment of status under section ___ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a ___ until ___.

[ ] As a condition of admission, respondent is to post a $___ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

Other: _____

Date: Oct 5, 1998

Appeal: ~~WAIVED~~ Appeal Due By: November 4, 1998

Respondent reserved appeal

INS waived appeal

/s/ Deitrich H. Sims
DEITRICH H. SIMS
Immigration Judge

LIMITATIONS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

( ) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your

control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years after the date of entry of the final order of removal.

( ) 2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exception circumstances beyond your control** will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for a period of ten (10) years from the date of your scheduled hearing.

(✓) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date other than because of exceptional circumstances beyond your control** will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the date of the scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than $1000 and not more than $5000.

( ) 4. An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the INS, other than because of exceptional circumstances beyond your control** you will not be eligible for certain forms of relief under the Immigration and

Nationality Act (see Section A. below) for ten (10) years after the date you are scheduled to appear.

**the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:
   1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
   2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
   3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language he/she understands by the Immigration Judge: /s/ Dietrich H. Sims or Court Clerk: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:
MAIL (M) PERSONAL SERVICE (P) (circled)

TO: [✓] ALIEN [ ] ALIEN c/o Custodial Officer
[✓] ALIEN's ATT/REP [✓] INS

DATE: 10-5-98 BY: COURT STAFF /s/ DHS

Attachments: [ ] EOIR-33 [ ] EOIR-28
[ ] Legal Services List [ ] Other

V6

APPENDIX H

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Miami, Florida

File No.: A 73 096 876 October 5, 1998

In the Matter of	)	
DJORDJE LEZAJIC,	)	IN REMOVAL PROCEEDINGS
Respondent	)	

CHARGES: Section 237(a)(1)(C)(i) I&N Act, as admitted, and that after admission as a non-immigrant a subsequent change to another non-immigrant status pursuant to Section 248 of the Act, you failed to maintain or comply with the conditions of your change of status.

APPLICATIONS: Request for Asylum in the United States pursuant to Section 208 of the Immigration and Nationality Act, as amended.

Request for Withholding of Removal pursuant to Section 241(b)(3)(A) of the Immigration and Nationality Act, as amended.

Request for Voluntary Departure in the alternative pursuant to Section 240(B) of the Immigration and Nationality Act, as amended.

ON BEHALF OF RESPONDENT:

Judd James, Esquire
4437 Hollywood Blvd.
Suite C
Hollywood, Florida 33021

ON BEHALF OF SERVICE:

Michael Babitz, Esquire
Assistant District Counsel
Miami, Florida

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 29-year-old male who is a native and citizen of Yugoslavia. The respondent was admitted to the United States at Atlanta, Georgia on or about November 2, 1992, as a visitor for pleasure. The respondent's status was changed to that of a student on March 27, 1993. The respondent failed to maintain his status or comply with conditions of his change of status and he last attended school on August 23, 1994.

At a Master Calendar proceeding, the respondent admitted to the factual allegations contained in the Notice to Appear and conceded removal as charged, Exhibit 1. Therefore, removal has been established by clear and convincing evidence. See 8 C.F.R. 240.8(a) and 8 C.F.R. 240.8(c); *Woodby v. INS*, 385 U.S. 276 (1966). The respondent declined to designate a country in the event it would become necessary. The Court designated Yugoslavia.

The respondent filed a Form I-589 request for asylum in the United States (Exhibit 2). The respondent's request for asylum has also been considered a request for withholding of removal pursuant to Section 241(b)(3)(A) of the Immigration and Nationality Act (the Act), as amended.

In the alternative the respondent requests voluntary departure.

ASYLUM AND WITHHOLDING OF REMOVAL

The respondent seeking a discretionary grant of asylum must demonstrate status as a refugee as defined by Section 101(a)(42)(A) of the Act. The definition includes requirement that the respondent demonstrate unwillingness or inability to return to his home country because of

persecution or a "well-founded" fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. The requirement is met by a showing of circumstances in which a reasonable person would fear persecution *Matter of Mogharrabi*, 19 I&N Dec. 439 (1987).

Accordingly, in determining whether a respondent is eligible for asylum, a respondent's subjective mental state must be considered against the background of circumstances prevailing in the respondent's own country. The objective reasonableness of respondent's fear can be based upon what is happened to other similarly situated as reported in the Department of State Country Reports on Human Rights Practices or based upon other reliable sources. In some cases, the only available evidence of respondent's subjective fears maybe the respondent's own testimony. Such solitary evidence can suffice where the testimony is credible, consistent, and sufficiently detailed to provide a plausible, coherent account of the basis of the respondent's fears. Finally, not just any fear of persecution will sustain the respondent's burden, the objectively reasonability of persecution on account of the grounds specified in Section 101(a)(42)(A) of the Act, and the respondent's subjectively reasonable fear of experiencing the persecution both must be established. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

The respondent bears the evidentiary burden of proof and persuasion application for asylum and withholding. *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). In addition to establishing eligibility for a grant of asylum, a respondent has the burden of establishing that a favorable exercise of discretion is warranted *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984).

Where respondent has shown that he or she has been persecuted in the past on account of race, religion, nationality, membership in a particular social group, or political opinion the likelihood of present persecution becomes relevant with regard to the exercise of discretion and asylum can be granted or denied at the Court's discretion even if there is little likelihood or present persecution. *Matter of Chen*, I&N Dec. 3104 (BIA 1989).

A respondent who is seeking withholding of removal from any country must show that such respondent's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion. Section 241(b)(3)(A) of the Act. In order to make this showing, the respondent must establish "a clear probability of persecution on account of one of the enumerated grounds" *INS v. Stevic*, 467 U.S. 470, 1984. This clear probability standard requires a showing that is more likely than not that the respondent would be subjective to persecution. Under the Refugee Act of 1980, withholding of removal is mandatory. Therefore, once the respondent has established qualifications for withholding and that he or she is not ineligible under provision Section 241(b)(3)(B) of the Act it must be granted and the respondent cannot return to the country where he or she would face persecution. Respondent may, however, be removed to another country under certain circumstances. In this regard withholding of removal, differs from asylum, which the grant is discretionary.

TESTIMONY AND EVIDENCE

The respondent testified that he was admitted to the United States on November 2, 1992, at Atlanta, Georgia on

a visitor's visa. The respondent was first admitted to the United States in 1976 to visit his grandmother; he visited his grandmother many times, i.e. every other year.

The respondent testified that he grew up in Zemun (Serbia), Yugoslavia and Zemun is five to six miles from Belgrade. The city of Zemun is the region of Vojvodina. His family moved to Surcin and to a larger home later.

The respondent claimed that his father is Serbian and his mother is Croatian. He also has one brother age 25 in Surcin. The respondent's brother requested a visitor's visa to the United States, but was denied.

The respondent was in the military from June, 1988 to June 1989. During that time, the respondent stated that the communists were in power.

The respondent claimed that his problems in Yugoslavia were because of his mixed background, i.e. his mother is Croatian and his father is Serbian. Before 1991, his ethnic background was not that important; people were just uncomfortable with him.

After 1991 things became worse because of the first free elections in Croatia. The Croatian people voted to separate from Yugoslavia. According to the respondent, the Serbs controlled the army and the federal government. The respondent described the historical conflict between the Serbs and the Croatians. He claimed that the Croatians were Roman Catholic and the Serbians were Orthodox Christians.

The respondent claimed that as a result of the Croatian separation from Yugoslavia approximately 30% of ethnic Serbians were displaced and that the Serbians remembered their prior persecution. The respondent

stated that the timeframe was from February, 1990 until April 1992. In Serbia they were concerned about relatives in Croatia; they were hostile and there was a hostile reaction to the Croatians. In 1989 when the Croatians came to power they promised that no one would take advantage or suppress others. He claimed that the Serbs wanted one united greater Serbia state which conflicted with others; that they wanted an ethnic pure state, that they wanted no freedoms, no legal protections, and that they wanted to create fear.

The respondent testified they wanted ethnic cleansing; that the various ethnic groups tried to kill and eliminate one another which included women, children, and civilians.

In his region opposition parties formed which consisted of academicians, lawyers, and former communists who had different views than Milosevic (the current president of Serbia).

The respondent testified that he was working and living in Serbia from 1989 till 1992. In March of 1991, the respondent testified that he decided to participate in a demonstration in the main square in Belgrade. The respondent stated that he became involved in the demonstration because the government did not have anyone to oppose them; and that the government's decision affected people's lives, the war in Croatia, and he was unhappy with the way the government ran the country. According to the respondent, the police attacked the peaceful crowd and tried to breakup the demonstration, shooting occurred, the police beat people, he was hit three times by the police but managed to escape and return home. He was not recognized. The respondent stated that the purpose of the

demonstration was for free elections that were fixed by the government.

The next demonstration he participated in he was not harmed by the police.

The respondent testified ethnic Croatians were forced/evicted from their homes and those homes were given to Serbs.

Respondent testified that his mother came to visit his grandmother and received a green card (resident alien card) on July 5, 1998, through her mother. His grandmother is a United States citizen. His mother claimed that the people oppressed were those with mixed ethnic backgrounds and that it was difficult to work and that there were intense situations in Yugoslavia.

According to the respondent, if he returns to Yugoslavia it is mandatory that the person maybe drafted at any time there is a high probability that he would have to serve in Kosovo and the government would do the same thing in Croatia and Bosnia.

The respondent testified that there were tensions in the military in 1988 and 1989. He stated that there was no trust between the minorities; the Albanian soldiers would shoot at Serbian authorities.

The respondent stated that he heard in the news reports that Yugoslavia is using the military force to fight ethnic Albanians. Respondent believes that if he returned to Yugoslavia he would be put in a position to kill civilians or be harmed for not obeying orders. The respondent claimed that the penalty for refusing to report to the draft is imprisonment, i.e. 10 years. He stated that he believes that he would be in the front line of Kosovo to kill civilians. The

respondent testified that he opposes the war and does not think innocent people should be killed.

The respondent was employed prior to leaving Yugoslavia, but he believes that if returned to Yugoslavia he could not find a job. He claimed that unemployment is high and a person's ethnic background is taken into consideration, i.e. an employer requires an employee to submit his or her birth certificate which states the ethnic background of his or her parents.

The respondent claimed that during one demonstration a police officer killed one student.

The respondent also claimed that there was no safe place in Serbia to relocate; that people are measured by their ethnic background; and that there are no legal protections.

The respondent testified that he has never been convicted of a crime and has the financial means to leave the United States. Although the respondent testified he would not like to return on his own to Yugoslavia because of the current situation, he would obey an order granting him voluntary departure.

On cross-examination the respondent testified that he never attempted to relocate to Croatia because his father is Serbian and his mother is Croatian; that he did not know how he would be treated; and that he had no family to help him in Croatia.

Although the respondent's mother is in the United States, he testified that she was not in Court to testify on his behalf because she does not speak English; and she just arrived in the United States three or four weeks ago (the day from the hearing).

The respondent claimed that he did not want to return to Yugoslavia because he was concerned that maybe he would be drafted and have to fight a war he disagreed with. The respondent stated that his brother age 25 lives in Serbia and attended one or two military exercises but was not drafted. The respondent and his brother have the same mother and father.

The respondent testified that he was a member of an opposition party since the Spring of 1990. He is a paying member of this opposition party. He stated that the government is unaware of his membership in the opposition party. Respondent was asked to explain why he failed to mention on either his asylum application or the supplemental asylum application that he filed with the Court that he was a member of an opposition party. The respondent's explanation was that he was just a supporter. According to the respondent, the opposition party he was a member of was the largest opposition party in Serbia consisting of approximately a 100,000 members. The respondent also testified that this opposition party organized demonstrations.

Respondent was also asked to explain why he failed to mention on his asylum application (Exhibit 2) that his fear of returning to Yugoslavia was because of his ethnic background. In response, respondent stated that a friend filed his asylum application; that he did not know what else applied; and that his main concern was the war.

According to the respondent he came to the United States as a visitor, then, changed his status to that of a student when he learned that things were not getting any better (Yugoslavia). The respondent claimed that when he arrived in the United States he was not fluent in English;

however, he studied English in school one and a half years, then, he completed his asylum application.

The respondent described the process in which he filed an asylum application with the Service as follows: 1. The respondent testified that a friend who prepared his asylum application is fluent in both languages; 2. That it took his friend one week to prepare his asylum application; 3. That his friend read the questions to him and he gave the answers that were on the asylum application to his friend; 4. That he did not remember if he read over the asylum application but he admitted that he signed it; and, 5. That his friend did not add or miss anything on his asylum application, Exhibit 2.

The respondent stated that his mother was admitted to the United States in the summer of 1994 as a visitor and later returned to Yugoslavia (Serbia) to the same home as she had resided in prior to leaving.

The respondent testified that the first demonstration he participated in was in March, 1991 (March 9, 1991 to March 14, 1991). The respondent claimed that one year later he participated in another demonstration. The respondent stated he attended two March protests. Again, the first protest was in March, 1991, where there were an estimated 80 to 100,000 participants. Respondent also stated that the police did not specifically target him but rather all demonstrators.

The respondent testified that in February, 1990, there were problems with ethnic minorities because of the war in Croatia. The respondent lived in Surcin a mostly Serbian neighborhood with some Croatians.

While at work in Yugoslavia, respondent testified that he told his supervisor at work that he wanted to come to the United States to visit his grandmother. According to the respondent when he told his supervisor his grandmother's last name he knew that both he and his grandmother were Croatian. His supervisor told him not to come back to work. The respondent believed that this was unfair since he knew people who were absent from work for three to six months and came back to work with no problems. Respondent admitted this part of his story was not on his asylum application. Respondent stated that three weeks lapsed between the time his supervisor told him not to return and he received a visa. The respondent claimed that he took leave without pay and his boss was hostile to him. Respondent also claimed that his boss could not technically fire him but he was told not to return. Later the respondent admitted that his boss legally could not fire him. At work the respondent had arguments with his supervisors and co-workers about his political opinions. The respondent stated that if he had not visited his grandmother he could have retained his job. In addition, the respondent testified that many people lost their jobs because of their ethnic background in Serbia; however, this was not the case at his job.

The respondent testified that his brother is a security guard and has been employed.

Additionally, the respondent testified that neighbors abused his mother and his brother because they were Croatians, inferring that they had no place in Serbia.

The respondent testified that he has never been arrested, never been tortured and never been beaten because of his ethnic background.

The respondent admitted that he waited over two years to apply for asylum in the United States.

On redirect examination the respondent testified that his mother was a homemaker. He also stated that the friend who completed his asylum application was not an attorney. At that time, the respondent stated that he did not have any money. The respondent's brother is currently unemployed.

In response to questions from the Court the respondent stated that he finished high school, i.e. the first part lasting two years where he studied math, English, and physics; and the second part which lasted two years he studied technical subjects, trade operations, physics, math, and English. He is a qualified machinist.

The respondent testified that his grandmother supported him while he was studying in the United States. The respondent's friend and his friend's wife also sponsored the respondent.

The respondent testified that the person who assisted him in the preparation of his asylum application is a draft engineer in Ft. Lauderdale, approximately 39 years of age.

The respondent stated that he studied English because he wanted to stay in the United States, and he realized that the situation in his country would not change.

According to the respondent, he was interviewed by an asylum officer and the asylum officer reviewed his asylum application with him.

The following documents on the record of proceedings Exhibit 1, the Notice to Appear; Exhibit 2, the respondent's

asylum application (Form I-589), including his passport, his application to extend/change non-immigrant status Form I-797, his Form I-20, his Form I-94, and his social security card; Exhibit 3, the Serbian/Montenegro Profile Asylum Claims and Country Conditions, U.S. Department of State, Bureau of Democracy Human Rights and Labor, April, 1997; Exhibit 4, the respondent's Supplemental Asylum Application filed subsequent to the Notice to Appear proceedings[1]; and Exhibit 5, the respondent's supporting documents.

ANALYSIS

It is well-established that the BIA attaches significant weight to the credibility of an asylum applicant. A respondent's consistent and detailed testimony can be sufficient to meet the burden of establishing persecution. *Matter of ODO*; *Matter of SMJ*, Int. Dec. 3303 (BIA 1997): *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996); *Matter of Mogharrabi*, *supra*. In determining credibility of respondent's testimony, I have taken into account no only his demeanor while testifying but also the rationality, internal consistency and inherent persuasiveness of his testimony and the matter in which it melds together with other evidence. The respondent must also establish the facts, if true would satisfy the standard of eligibility for the relief requested.

The Court finds instructive a decision of the United States, Court of Appeals for the 9th Circuit which upheld

[1] Exhibit 4 only consisted of the respondent's supplemental asylum application. There were no additional documents submitted with this supplemental file on April 24, 1998.

the BA's adverse credibility finding in an asylum case. *Ceballos-Castillo v INS*, 904 F.2d 519, 520 (9th Cir. 1990). The Court found that the alien lacked credibility because he had made inconsistent statements on his Form I-589 and at the hearing regarding the identity of his alleged persecutors. The Court held that such misstatements involved the heart of the asylum claim and; therefore, supported an adverse credibility finding. In so finding, the 9th Circuit distinguished material misstatements from incidental ones. *Ceballos-Castillo v. INS*, *supra*, at 520.

In this case the Court concludes that the inconsistencies at issue are analogous to the inconsistencies in *Ceballos-Castillo* and go to the heart of his asylum claim and the credibility as a witness and thereby significantly undermines the credibility of his request for asylum.

The respondent's asylum application (Exhibit 2) filed with the Service stated that the reason he is seeking asylum is because he was a soldier in the Yugoslavian army; that he's served his mandatory time in the military and was discharged; that since he is in his twenties he is considered a reservist; that he could be pulled back into the military at any time; that when he left Serbia he was supposed to report to the military but did not; the failure to notify the military that he's leaving the country would result in his arrest, courtmartial, and imprisonment as a deserter; that he could be returned to the military and be sent to Bosnia to fight; and that he does not believe or want to be part of the government of Serbia. However, subsequent to his initiation of removal proceedings on April 24, 1998, the respondent filed a supplemental asylum application which stated that he has a well-founded fear because of his national origin, as in mixed Croat/Serb. His testimony also indicated that he feared

returning to Serbia because he is both Croatian and Serbian, but nowhere on the asylum application filed with the Service does the respondent indicate that he is seeking asylum because of his national origin, i.e. mixed Croatian and Serbian. Nowhere on this initial asylum application does he state that he suffered mistreatment or likely to suffer mistreatment in Serbia because he is both Croatian and Serbian.

On his asylum application, Exhibit 2, filed with the Service the respondent answered "no", to the question "have you or any member of your family ever been mistreated/threatened by the authorities of your home country or by group(s) controlled by the government or by a group(s) which the government or your country is unable or unwilling to control" where his testimony and supplemental asylum application indicate that he was mistreated (beaten and detained by the Serbian police) because of his political opinion. His asylum application (Exhibit 2, question 21) filed with the Service fails to mention that he was mistreated in Serbia for any reason. Although, the respondent's testimony and supplemental asylum application Exhibit 4 indicated that he was beaten and participated in demonstrations in Yugoslavia. The asylum application Exhibit 2 filed with the Service does not. The Court does not believe that a reasonable person in similar circumstances would fail to mention on his asylum application (Exhibit 2) that he was beaten and that he participated in a demonstration. The Court believes that this should have been mentioned in his asylum application. More specifically, the Court believes that if the respondent's life were truly at state, and he truly feared being mistreated in Serbia he would have mentioned the above in his asylum application that he was beaten by the

police and participated in demonstrations opposing the government. The respondent is well-educated (plus he studied intensive English for one and a half years in the United States before completing his asylum application), and was assisted in the preparation of his asylum application by a friend, D-R-A-G-A-N, last name B-U-K-U-R, a 39-year-old draft engineer at Ft. Lauderdale, Florida.

The respondent testified that he has been a member of an opposition party since the Spring of 1990, and is a paying member whereas his asylum application, Exhibit 2, failed to mention that he is a member of an opposition party. His asylum application, Exhibit 2, only stated that he was drafted in the Yugoslavian national army and that his brother was also in the Yugoslavian national army, and that they are no longer active. In addition, the respondent's supplemental asylum application an affidavit filed with it also conflicts with this testimony because the application (affidavit) fails to mention that he's a member of any opposition party and a paying member. In fact, the respondent answered "no", to the question have you or any member of your family ever belonged to or been associated with any organization or groups in your home country. (i.e., a political party, student group, union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group. or the press), Exhibit 4. The Court noticed that the respondent's supplemental asylum application was prepared with the assistance of his present attorney of record. Furthermore, when the respondent was asked why he failed to mention on either of his asylum applications, Exhibit 2 of his supplemental asylum application, Exhibit 4 that he was a member of an opposition party the respondent replied that he was just a supporter. The Court finds

that the respondent failed to provide a convincing explanation for his failure to mention on either his asylum application, Exhibit 2, and on his supplemental asylum application, Exhibit 4, that he was a member of an opposition party, and a paying member.

The Court notes that by pertinent regulation there is a presumption that the respondent is aware of the contents of his asylum application which bears his signature, 8 C.F.R. 28.13(c)(2) 1998.

The Court believes that the discrepancies and omissions of key events described provides specific and cogent reasons to conclude that the respondent provided incredible testimony. The Court also finds the respondent has not provided convincing explanation for these discrepancies and omissions.

In addition, the respondent filed a Form I-20 in which he signed which stated that "I certify that I seek to enter or remain in the United States temporarily and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form." See Exhibit 2. It was not until 1994 almost two years after respondent was admitted to the United States that he applied for asylum. The events that the respondent described during his testimony that happened to him occurred before he left Yugoslavia and entered the United States. The Court finds that the respondent's completion of the Form I-20, an immigration document and the approximately two years he waited to apply for asylum undermines the validity of his asylum claim.

On the basis of a careful and thorough analysis of the respondent's testimony and a careful and thorough examination of all the Exhibits the Court concludes that the

asylum of the respondent is not credible. Therefore, the Court makes an adverse credibility determination. *Matter of Boramand*, 17 I&N Dec. 450 (BIA 1980); *Osorio v INS*, 99 F.3d 928 (9th Cir. 1996). The respondent's testimony was not sufficiently consistent or believable to provide a plausible, coherent account of the basis for his fears and cannot suffice to establish his claim for asylum.

Additionally, the respondent failed to present corroborating evidence that he is a Croatian and Serbian, i.e. that his mother is Croatian and that his father is Serbian. The Court notes that the respondent's mother is in the United States and could have been made available to testify regarding his asylum claim. The Court, as in all non-English speaking cases could and would have made an interpreter available for his mother if needed and if requested by the respondent or his attorney. Counsel for the respondent is aware of this fact as he is a practicing immigration attorney before this Court.

The respondent submitted newspaper articles and other documents in support of his asylum claim. The evidence is of a general nature and does not deal with or discuss the respondent individually, such evidence generally in nature which does not deal with the respondent personally or directly is not entitled to great weight. *Matter of McMullen*, 17 I&N Dec. 542 (1980), *reversed on other grounds*, 658 F.2d 1312 (9th Cir. 1981); *Matter of Lam*, 18 I&N Dec. 15 (BIA 1981). In addition, these documents do not overcome the Court's finding that the respondent is not a credible witness and has not presented a credible asylum claim.

In view of all the foregoing and having discussed all the evidence of record I have no alternative but to conclude that

the respondent has failed to meet his burden of proof. In sum, the respondent fails to establish past persecution or well-founded fear of persecution. Also, the Court finds the respondent does not have a subjective and objective reasonable fear of returning to Yugoslavia. For these reasons, the Court concludes that the respondent is statutorily ineligible for asylum.

WITHHOLDING OF REMOVAL

Inasmuch as the respondent failed to satisfy the lower burden of proof required for asylum, it follows that he also failed to satisfy the clear probability standard of eligibility required for withholding of removal. *INS v Stevic*, *supra*. The evidence has not established that if he was now return to Yugoslavia it is more likely than not that he is subject to persecution on account of one of the five grounds specified in Section 241(b)(3)(a) of the Act.

VOLUNTARY DEPARTURE

In the alternative, the respondent applied for voluntary departure pursuant to Section 240 B of the Act, which provides in pertinent part that "the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if at the conclusion of a proceeding under Section 240 the Immigration Judge enters an Order granting voluntary departure, in lieu of removal, and finds that a) the alien has been physically present in the United States for a period of at least one year immediately proceeding the date, that the notice to appear was served under Section 239(a); b) the alien is and has been a person of good moral character for at least five years and immediately proceeding the alien's application for voluntary

departure; c) the alien is not deportable under Section 237(a)(2)(A)(iii) or Section 237(a)(4); and d) the alien has established by clear and convincing evidence that the alien has the means to depart the United States and intends to do so. Section 240B(b)(1)of the Act.

The respondent testified that he's never been convicted of a crime; that although he would not like to return to Yugoslavia because of the current situation he would obey an Order granting voluntary departure; that he has the financial means to leave the United States.

Despite the Court's credibility finding against the respondent, I find that he is statutorily eligible for voluntary departure will grant the respondent's application for voluntary departure as a matter of discretion. Respondent is granted voluntary departure without expense to the Government on or before November 4, 1998, or any extension beyond such date as may be granted by the District Director for the Immigration and Naturalization Service, and under such conditions as the District Director shall grant.

VOLUNTARY DEPARTURE BOND

Section 240B(b)(3) states that an alien permitted to depart voluntarily under this Section shall be required to post a voluntary departure bond in an amount necessary to ensure that the alien will depart to be surrendered upon proof that the alien has departed the United States within that time specified.

The Court will impose a voluntary departure bond on the respondent in the amount of $500. The voluntary departure bond must be paid to the Immigration and

Naturalization Service within five business days of this Order. If the respondent fails to pay the voluntary departure bond as required the Order granting voluntary departure will be rescinded and the respondent shall be removed from the United States to Yugoslavia on the charged contained in the Notice to Appear.

The following Order will be entered.

ORDER

IT IS HEREBY ORDERED that the respondent's application for asylum pursuant to Section 208(b) of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal pursuant to Section 241(b)(3)(A) of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that in lieu of an Order of Removal the respondent be granted voluntary departure pursuant to Section 240(B) of the Immigration and Nationality Act, without expense to the Government on or before November 4, 1998, or any extension beyond such date as may be granted by the District Director for the Immigration and Naturalization Service and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if the respondent fails to depart when and as required the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following Order shall thereupon become immediately effective: The respondent shall be removed from the United States to Yugoslavia on the charge contained in the Notice to Appear.

IT IS FURTHER ORDERED that a voluntary departure bond be imposed on the respondent pursuant to Section 240 B(b)(1)(3) of the Immigration and Nationality Act in the amount of $500.

Dated this 5th day of October, 1998.

/s/ Deitrich H. Sims
DEITRICH H. SIMS
U.S. Immigration Judge,
Miami, Florida.

CERTIFICATE PAGE

I hereby certify that the attached proceeding before DJORDJE LEZAJIC in the matter of:

Djordje Lezajic

A 73 096 876

Miami, Florida

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

/s/ Elizabeth Thomas
Elizabeth Thomas, Transcriber

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

12/21/98
(Completion Date)

APPENDIX I

U.S. Department of Justice **Notice to Appear**
Immigration and Naturalization Service

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: 73 096 876

In Matter of:

Respondent: LEZAJIC, DJORDJE currently residing at: 1944 FILLMORE STREET HOLLYWOOD, FL 33020-0000 (Number, street, city, state and ZIP code) 954-920-3287 (Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;
2) You are a native of YUGOSLAVIA and a citizen of YUGOSLAVIA;
3) You were admitted to the United States at ATLANTA, GA on or about November 2, 1992 as a visitor for pleasure.
4) Your status was changed to that of student on March 27, 1993;
5) You failed to maintain status or to comply with the the conditions of your change of status in that you last attended school on 8/23/94.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
Section 237(a)(1)(C)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission as a non-immigrant and subsequent change to another nonimmigrant status pursuant to Section 248 of the Act, you failed to maintain or comply with the conditions of your change of status.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to:

☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: 155 SOUTH MIAMI AVE., ROOM 800, MIAMI, FL 33130-0000 (Complete Address of Immigration Court, Including Room Number, if any) on JAN 23 98 (Date) at 09:00 AM (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

/s/ H. Weizman, SAC
(Signature and Title of Issuing Officer)

Date: Oct. 21, 1997

MIAMI, FL
(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear is served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or of the allegations in the Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on

proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the judge before whom you the appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

(Signature of Respondent)

Before:

Date: _____

(Signature and Title of INS Officer

Certificate of Service

This Notice to Appear was served on the respondent by me on Oct 21 1997, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person ☐ by certified mail, return receipt requested ☐ by regular mail

☒ Attached is a list of organizations and attorneys which provide free legal services

☐ The alien was provided oral notice in the _____ language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

/s/ [Illegible]	/s/ [Illegible]
(Signature of Respondent if Personally Served)	(Signature and Title Officer)